

Mandates of the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

Ref.: AL KHM 2/2024
(Please use this reference in your reply)

3 December 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights in Cambodia; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 54/36, 52/9, 50/17 and 52/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **sentencing to four years of prison of human rights defender Mr. Koet Saray**.

Mr. Koet Saray is a human rights defender and president of the Khmer Student Intelligent League Association (KSILA), an association which focuses on the mobilisation of students to engage in issues related to social development, good government, and the sustainable use of natural resources.

Concerns regarding the previous detention of Mr. Koet Saray and other members of KSILA were raised by a communication sent to your Excellency's Government by special procedures mandate holders on 10 June 2021 (AL [KHM 7/2021](#)). We thank your Excellency's government for their reply to this communication on 28 July 2021. However, in light of the following information received, we remain concerned over the subsequent detention of the human rights defender.

According to the information received:

On 6 November 2024, the Phnom Penh Court of First Instance sentenced Mr. Koet Saray, President of the Khmer Student Intellectual League Association (KSILA) to four years in prison. The human rights defender was also fined two million riel (approximately 490 USD) for incitement to cause social chaos, as per articles 494 and 495 of the Cambodian Criminal Code. He was also sentenced for committing a repeat offence as per article 88 of the Criminal Code. Evidence used in the court included an interview of Mr. Saray with Radio Free Asia and Facebook posts of March 2024, where he expressed concerns in relation to housing, land and property rights of local communities who were reportedly evicted and appealing to the Government to find solutions. The trial proceedings have reportedly failed to comply with international fair trial standards binding on Cambodia. Mr. Saray's conviction is presently under appeal.

On 5 April 2024, Mr. Saray was arrested at the KSILA Office in Phnom Penh, based on a questioning order issued by the Prosecutorial Department of the Phnom Penh Court of First Instance on the charge of “incitement to cause serious chaos to social security.” The prosecutorial department accused Saray and four other members of KSILA of “organizing a plan to persuade people to illegally occupy land, to violently fight against the competent authorities, and to make the people fearful of the authorities, going into hiding in the forest”. The authority also accused Mr. Saray of having “transferred pictures to the media outlets abroad for dissemination, which influenced national and international audience to misunderstand the leadership with a view to opposing the Government”. On 7 April 2024, Mr. Saray was remanded to pretrial detention at Phnom Penh’s Correction Centre on charges of committing a misdemeanour after being sentencing for another misdemeanour and incitement to commit a felony.

On 13 August 2020, Saray and five members of the Khmer Thavrak Youth Group were arrested for organizing protests to call for the release of Rong Chhun, a union leader arrested on 31 July 2021. At the time, Mr. Saray was charged and convicted to 20 months in prison by the court with incitement to cause chaos for the social security under articles 494 and 495 of the Criminal Code and fined 2 million Riel (about 490 USD). On 5 November 2021, he was released and placed under judicial supervision. He spent a total of one year and three months in prison.

Without prejudging the accuracy of the allegations raised above, we would like to express our concern regarding conviction of Mr. Saray, which appears to be related to the legitimate exercise of his right to freedom of expression, protected by both the Cambodian Constitution and the International Covenant on Civil and Political Rights (ICCPR), to which Cambodia is a state Party. In paragraph 11 of general comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including “political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” through any means of dissemination including internet-based modes. Penalizing such expressions appears to contradict the essence of international human rights obligations regarding freedom of expression.

We are further concerned that the proceedings in this case might have failed to meet the international fair trial guarantees stipulated in articles 9 and 14 of ICCPR, particularly the infringement of the principle of presumption of innocence. In paragraph 7 of the general comment (GC) No. 13, the Human Rights Committee on the presumption of innocence stresses the duty for all public authorities to refrain from prejudging the outcome of the trial.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the factual and legal basis for the repeated arrest and conviction of Mr. Koet Saray and how these are compatible with international human rights norms and standards related to the freedom of expression; freedom of peaceful assembly and of association, the right to liberty and security and the rights to a fair trial.
3. Please provide information on the measures that your Excellency's Government is taking to ensure that the appeal court will review the facts and law of the case in line with international human rights standards binding on Cambodia, to ensure that Mr. Saray does not face criminal penalties for actions that may involve the legitimate exercise of his human rights as protected by international law.
4. Please outline the steps your Excellency's Government is taking or plans to take to ensure that individuals expressing their fundamental freedoms including the freedom of expression, peaceful assembly and association are protected as provided for in the Covenant of Civil and Political Rights.
5. Please outline the steps your Excellency's Government is taking or plans to take to ensure that human rights defenders working to promote, protect and defend human rights and fundamental freedoms in Cambodia are protected and guaranteed a safe and enabling environment to carry out their peaceful and legitimate activities.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Vitit Muntarbhorn
Special Rapporteur on the situation of human rights in Cambodia

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Gina Romero
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to articles 9, 14, 17, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Cambodia on 26 May 1992, which provide for the rights to life, to liberty and security of the person, not to be subjected to arbitrary arrest or detention, to be promptly informed of the reasons for the arrest and of any charges against him or her, to be brought promptly before a judge, to a fair trial within a reasonable time, and to freedom of opinion and expression, peaceful assembly and association. These articles shall be read individually and together with article 2.3. of the ICCPR, which provides for the right to an effective remedy for every person whose rights contained in the Covenant have been violated.

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right “to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media”. This right applies online as well as offline and includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.

In its [general comment No. 34](#), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including “political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse” (CCPR/C/GC/34, para. 11).

The Committee further asserts that there is a duty of States to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (para. 23). Recognizing how journalists and persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including judges and lawyers, are frequently subjected to threats, intimidation and attacks because of their activities, the Committee stresses that “all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress” (para. 23).

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) ICCPR. Under these requirements, restrictions must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction, which are the respect of the rights or reputations of others and the protection of national security or of public order (*ordre public*), or of public health or morals; and (iii) be necessary and proportionate for those objectives. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant, proving “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat” (CCPR/C/GC/34, para. 35). The Human Rights Committee recalled that the relation

between right and restriction and between norm and exception must not be reversed. In this regard, the Human Rights Committee stated that the restrictions must be “the least intrusive instrument among those which might achieve their protective function”. (Paragraph 34, [CCPR/C/GC/34](#)).

We would also like to refer to article 21 of the ICCPR, that states that the right to freedom of peaceful assembly should be enjoyed by everyone, as provided for by article 2 of the Covenant and resolutions 15/21, 21/16 and 24/5 of the Human Rights Council. In its resolution 24/5, the Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline. We also recall that article 22 of the ICCPR protects the right to freedom of association, including the rights of everyone to associate with others and to pursue common interests. Freedom of association is closely linked to the rights to freedom of expression and to peaceful assembly and is of fundamental importance to the functioning of democratic societies. These rights can only be restricted in very specific circumstances, where the restrictions serve a legitimate public purpose as recognized by international standards and are necessary and proportionate for achieving that purpose.

The Human Rights Committee stated that “the imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect” (CCPR/C/GC/37, para. 36).

We would also like to refer to article 9 of the ICCPR which relates to the right to liberty and security, and states that no person should be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Enshrined in this article is the one’s right to be brought promptly before a judge and to be brought to trial within a reasonable time or to be released. “It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.” We also refer to article 10 of the ICCPR, outlining that those deprived of their liberty must be treated with respect and humanity.

We also to articles 14 and 19 of the ICCPR which provide for the right to a fair and public hearing, the right to be presumed innocent until guilty, to be tried without undue delay, and the right to communicate with counsel of one’s own choosing. We would like to refer your Excellency’s Government to general comment No. 35 of the Human Rights Committee, which has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (article 19), freedom of peaceful assembly (article 21), and freedom of association (article 22).

In addition, the Special Rapporteur on the rights to freedom of peaceful assembly and of association highlighted that “negative and hostile narratives increasingly used to vilify and criminalize civil society and activists deepen the stigmatization of those exercising their rights to peaceful assembly and association. Stigmatization, whether intentional or not, especially when propagated by authorities,

effectively denies these fundamental rights. It misrepresents legitimate exercises of freedom as illegal and those involved as criminals or threats to national security, public order or morals. This fuels harmful stereotypes, fosters hostility, justifies punitive measures and triggers undue restrictions on these rights” (A/79/263, para. 11).

We would like to refer your Excellency’s Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 point c), which provides for the right to communicate with non-governmental or intergovernmental organizations;
- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.